

## **REMARKS**

Reconsideration of the application, as amended, is respectfully requested.

Reconsideration and allowance of the captioned application in view of the following remarks is respectfully requested. These comments are intended to advance the case to issue without delay. By this response, no claims are added or cancelled. Accordingly, the claims in the application remains to be claims 1-13.

Claims 1-7 and 9-13 have been rejected under 35 USC §103(a) as being unpatentable over Ekkert et al. 5,435,467. This rejection is respectfully traversed.

Ekkert is cited as disclosing each element of the claimed invention as claimed in claims 1-7 and 9-13 except that Ekkert fails to teach the ratio of the pour spout area to the circumscribing wall area as greater than about 0.20. It is asserted in the Office Action that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the ratio of the pour spout area to the circumscribing wall area of Ekker to be greater than about 0.20, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. The same argument is set forth with regard to claims 2 and 10.

Applicant respectfully submit that the present claim is not an optimumization of a known range as the presently claimed invention is outside any the known range. Rather, the presently claimed invention solves a shortcoming of the prior art, namely that when the ratio of the pour spout area to the circumscribing wall area is too small the fitment creates a double pour which is undesirable. Thus, the present claim solves a problem in the art not by mere optimization, but rather solving a shortcoming in the prior art.

Claim 8 has been rejected under 35 USC §103(a) as being unpatentable over Ekkert et al. 5,435,467 as applied above, and further in view of Haffner et al. This

rejection is respectfully traversed for the reasons stated above with regard to the rejection of claims 1-7 and 9-13.

In view of these remarks, withdrawal of these rejections is respectfully requested.

If a telephone conversation would be of assistance in advancing the prosecution of the present application, applicants' undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kevin J. Stein", is written over a horizontal line.

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